IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.2.2007

Coram

The Honourable Mr.Justice P.D.DINAKARAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

T.C.Nos(Appeals).173 and 174 of 2003,
404 and 405 of 2004 and
1329 and 1330 of 2005

Commissioner of Income Tax - I
Chennai ...Appellant in
TC.No.173 & 174/2003

Commissioner of Income Tax
Chennai ...Appellant in
TC.No.404 & 405/2004
T.C.No.1329&1330/2005

-vs-

M/s.Ashok Leyland Ltd
Chennai ...Respondent in
all TCs

Tax Case Appeals filed under Section 260A of the Income Tax Act.

Tax Case(Appeal)No.173 & 174 of 02 filed under section 260-A preferred against the order of the Income Tax Appellant Tribunal Chennai Bench 'C' Chennai dated 12.6.03 in ITA No.634/Mds/95 and 368/Mds/90 Assessment year 1991-92 against the Commissioner of Income Tax (Appeal)-1 Madras.34 dated 23.12.97 in ITA No.78/97-98 Assessment year 1991-92 against the order of the Assistant Commissioner of Income Tax Central Circle II (1) Madras.34 dated 27.3.97 PAN/GIR 47-066-CX-2964.

Tax Case (Appeal)No.404 & 405 of 04 against the order of the Income Tax Appellate Tribunal Bench 'A' madras dated 29.7.02 in ITA 61/Mds/94 & 70/Mds/94 Assessment year 1990-91 against the commissioner of Income Tax (Appeals)-1 Madras.34 dated 28.10.93 in ITA NO.52/93-94 Assessment year 1990-91 against he order of the Assistant Commissioner Central Circle II (1) (I/C) Madras.34 dated 31.3.93 PAN/GIR No.s47-066-CX-2964.

Tax Case (Appeal)No.1329 & 1330 of 05 against the order of the Income Tax Appellate Tribunal Chennai Bench 'B' Chennai.34 dated 23.8.04 in ITA No.445&446/mds/s98 Assessment year 1990-91 & 1991-92 against the Commissioner of Income Tax (Appeals)-1 Madras.34 in ITA No.77/97-98

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Assessment year 1990-91 against the order of the Assistant Commissioner of Income Tax Central Circle II (1) Madras.34 PAN/GIR No.AACA 4651 dated 31.1.97 and against the Commissioner of Income Tax (Appeals)-1 Madras.34 dated 23.12.97 in ITA No.78/97-98 Assessment year 1991-92 against the order of the Assistant Commissioner of Income Tax Central Circle II (1) Madras.34 PAN/GIR No.47-066-CX 2964 dated 27.3.97.

For Appellant : Mrs.Pushya Sitaraman,
Senior Standing Counsel for IT.

For Respondent : Mr.C.V.Rajan for
Mr.R.Vijayaraghavan in
T.C.Nos.173 &174 of 2003
T.C.Nos.1329 & 1330 of 2005

Mr.R.Venkatnarayanan for
M/s.Subbaraya Aiyar in
T.C.Nos.404 & 405 of 2004

C O M M O N J U D G M E N T

(The judgment of the Court was delivered by
CHITRA VENKATARAMAN,J)

T.C.Nos.173 and 174 of 2003 are relating to 1991-92 assessment period. The substantial questions of law formulated for consideration are as follows:-

1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that excise duty will form part of the total turnover for the purpose of calculation of Section 80 HHC?

2. Whether in the facts and circumstances of the case, the Tribunal was right in holding that scrap sales should not be included in the total turnover for the purpose of calculation of deduction under Section 80 HHC?

3. Whether in the facts and circumstances of the case, the Tribunal was right that the recovery of rent made from salaries to managerial personnel, lease rentals, other income and service charges should be included as business profits but excluded from total turnover?

4. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the assessee is eligible for benefit of depreciation on assets which were sold to the transport corporation though the transaction was termed as lease?.

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2. T.C.Nos.404 and 405 of 2004 are relating to 1990-91 assessment period. The substantial questions of law formulated for consideration are as follows:-

1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that excise duty should be deducted from the total turnover for the purpose of computation of benefits under Section 80 HHC?

2. Whether in the facts and circumstances of the case, the Tribunal was right in holding that unabsorbed loss should not be deducted to arrive at the profits for the purpose of calculation of deduction under Section 80 HHC?

3. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the premium payable on redemption of debentures in future years is to be spread over and part of it allowed as a deduction in this year?

4. Whether in the facts and circumstances of the case, the Tribunal was right in including lease rent, rental income and other miscellaneous income in the profits of business for the purpose of computation of deduction under Section 80 HHC?

5. Whether in the facts and circumstances of the case, the Tribunal was right in directing the assessing officer to recompute the interest exempted under Section 10(15)(iv) in accordance with the ruling in Vijaya Bank vs. CIT 187 ITR 841 (SC)?

3. T.C.Nos.1329 and 1330 of 2005 are relating to 1990-91 assessment period. The substantial questions of law formulated for consideration are as follows:-

1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the transaction between the assessee and the MSRTC Ltd., is a lease transaction and not a sale transaction when the MSRTC had paid almost the entire amount as down payment?

2. Whether, in the facts and circumstances of the case, the Tribunal was right in holding thatthe assessee is entitled for the depreciation on the above transaction?

3. Whether, in the facts and circumstances of the case, the Tribunal had enough material to hold that the

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transaction was a lease transaction? and

4. Whether, in the facts and circumstances of the case, the Tribunal was right in holding that the lease rental had to be excluded from the total turnover for the purpose of deduction under Section 80 HHC?

4. The assessee is engaged in the business of manufacture and sale of chassis for medium and heavy duty commercial vehicles, engines etc. The assessment for the year 1991-92 was originally completed under Section 143 (3); again after the giving effect to the order in appeal. Subsequently, it was taken up for rectification under Section 154 on the question of depreciation, as regards the lease of buses to MSRTC and Pune Municipal Transport Corporation which according to the Revenue was a sale transaction. Apart from that the relief under Section 80 HHC, as well as the interest and commitment charges on the loan were also taken up for consideration. The Assessing Officer construed the lease agreement as a simple sale and held that the assessee was not entitled to the depreciation relating to the vehicles.

5. As regards the claim for deduction under Section 80 HHC, the Assessing Officer reworked the calculation. Aggrieved by the said order, the assessee went on appeal. The Commissioner of Income Tax Appeals, upholding the order of the Assessing Authority and following the order for the earlier year, confirmed the view of the Assessing Authority that the lease was in reality a sale.

6. On the question of deduction under Section 80 HHC as regards the commission paid to the dealers, the Appellate Authority rejected the appeal for deduction. The assessee preferred two appeals. One was against the regular assessment made and the other as against the revision made.

7. On the question of lease transactions taken as a sale, the Tribunal noted that leasing of vehicles was the predominant business activity carried on by the assessee. It also noted the written lease agreement executed between the parties and that the assessee company had collected deposits. The lease rentals were adjusted against the deposits made by the lessee company. The Tribunal further noted that the assessee company was assessed to Maharashtra sales tax on these lease transactions which clearly showed that the exact nature of the transaction between the assessee and MSRTC was only a pure lease and not any sale. Hence, going by the terms of the lease, the Tribunal upheld the contention of the assessee that the transaction was a lease transaction. Hence, going by the evidence available and the legal position that the company shall continue to be the owner of the leased vehicles, the Tribunal found that there was no legal basis to bring to tax 100% of the security deposit received from MSRTC. The Tribunal directed the assessing officer to treat the rental amount received as its income. Consequently, the Tribunal held that the assessee was entitled to depreciation allowance on the leased out vehicles.

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8. On the question of Section 80 HHC relief on the excise duty element as forming part of the total turnover for the purpose of the relief , referring to the decision reported in 245 ITR 769 (CIT v. SUDARSHAN CHEMICALS INDUSTRIES LTD.), the Tribunal directed the Assessing Officer to exclude excise duty from the computation of turnover for the purpose of working out the benefit available to the assessee under Section 80 HHC of the Act.

9. As regards the addition of scrap scales to the total turnover, the Tribunal noted that the metallic scrap churned out in the process of assessee's manufacturing activities did not form part of the trading goods or stock-in-trade of the assessee company. Applying the decision reported in 257 ITR 60 (CIT v. MADRAS MOTORS LTD.), the Tribunal noted that the assessee never contemplated the export of scrap. As such, the scrap sales could not be taken as a part of turnover. Hence, the Tribunal directed exclusion of scrap on the computation of the total turnover for the purpose of Section 80 HHC.

10. The next issue as regards relief under Section 80 HHC relates to the lease rentals, recovery of rent made from the salaries paid to managerial personnel and other income and service charges. In respect of rent recovered from the salaries paid to the managerial personnel, the Tribunal noted that they did not form part of the receipts, and on the other hand, it represented the outgoings and recoveries. Consequently, the Tribunal held that the Assessing Officer erred in treating the said amount as non business income. The Tribunal set aside the view of the Assessing Officer and directed him not to include the said amount in the computation of business profit for the purpose of Section 80 HHC.

11. As regards lease rentals, the Tribunal noted that these were derived from the vehicles owned by the assessee let out to other parties. The Tribunal viewed that although it is a business income, it does not form part of the turnover. Hence, the Tribunal directed the Assessing Officer not to include the lease rentals as part of the computation of business profit for the purpose of Section 80 HHC.

12. As regards service charges and other income, the Tribunal held that these two amounts shall be treated as assessee's business income, but do not form part of its turnover. Thus the Tribunal allowed the claim of the assessee.

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13. The Revenue has come on appeal on the questions of law relating to the working of deduction under Section 80 HHC as well as on the recovery of rent made from salaries to managerial personnel, lease rental, other income and service charges on bills discounted relief. The Revenue has also raised the question as regards the nature of transaction that the assessee had with MSRTC.

14. As regards the questions in T.C.Nos.173 and 173 of 2003 are concerned, learned senior standing counsel for the Revenue fairly conceded

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that as regards the first question as to whether excise duty shall form part of the turnover for the purpose of calculation of deduction under Section 80 HHC, in the decision reported in 272 ITR 652 (CIT v. SUNDARAM FASTENERS LTD.), the Division Bench of this Court held that excise duty would not form part of the total turnover for the purpose of calculation of deduction under Section 80 HHC of the Act. Accordingly, the first question is answered against the Revenue.

15. As regards the second question as to whether scrap sale is not to be included in the total turnover for the purpose of calculation of deduction under Section 80 HHC, the same is also covered by the decisions reported in 257 ITR 60 (CIT v. MADRAS MOTORS/M.M. FORGINGS LTD) and 258 ITR 749 (CIT v. NSC SHOES). Going by these decisions, we hold that the Tribunal is correct in holding that the scrap sales would not be included in the total turnover for the purpose of calculation of deduction under Section 80 HHC. The second question is also answered against the Revenue.

16. As regards the third question on other income and service charges, lease rentals, includable in the total turnover, learned senior standing counsel also pointed out that the same is covered by the decisions reported in 257 ITR 60 (CIT v. MADRAS MOTORS/M.M. FORGINGS LTD) and 258 ITR 749 (CIT v. NSC SHOES) against the Revenue. As regards the bill discounting service charges and other income, the Tribunal, following the decision of this Court reported in 257 ITR 60 (CIT v. MADRAS MOTORS/M.M. FORGINGS LTD) held that they did not form part of the turnover and the said amount be treated as assessee's business income.

17. As regards lease rental and recovery of rent from the salaries paid to managerial personnel, considering the decision of this Court reported in 262 ITR 278 (PANDIAN CHEMICALS Vs. CIT), the said items are not includable in the total turnover; that they are to be included as business income. In the circumstances, having regard to the interpretation placed by the Apex Court on the income 'derived' from as appearing in Section 80HHC, the order of the Tribunal directing the exclusion of the said amount from turnover is correct. The income from lease rental is not relatable to industrial activity to go for inclusion in the turnover. Admittedly, the source of the receipt was not relatable to the industrial activity. In the decision reported in 262 ITR 278 (PANDIAN CHEMICALS Vs. CIT), the Apex Court held that the interest derived by the industrial undertaking of the assessee on deposits made with the Electricity Board for securing supply of electricity for running the industrial undertaking could not be said to flow directly from the industrial undertaking itself, and was not derived by the undertaking for the purpose of the special deduction under Section 80HH of the Act. The principle of that decision applies to the facts of this case as well. Hence the Tribunal is right in ordering exclusion of the recovery of rent made from the salaries of managerial personnel from total turnover for the purpose of calculating relief under Section 80HHC.

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18. The next question is as regards the claim for depreciation on the lease transactions entitled to depreciation entered into by the assessee with MSRTC. Learned senior counsel appearing for the Revenue submitted that going by the terms of the lease agreement, it is cleat that what was contemplated by the assessee was only a sale and that the transaction was an irrevocable one. Learned counsel also pointed out that when the entire cost of the vehicle to the extent of 90% is paid and the consideration shown as initial deposit will not earn any interest, the transaction, though called a lease, is in reality, a sale. She also pointed out that the lessee had taken the registration in its name. Further, as and when the bus body was built, the lessee was to raise an invoice for the body value. It is further seen that the initial deposit paid by the lessee would not carry any interest and the said sum was to be adjusted towards lease rentals. Learned senior standing counsel submitted that considering the fact that more than 90% of the lease amount of the vehicles was paid by the assessee, the said transaction was nothing but a sale.

19. Per contra, the learned counsel appearing for the assessee submitted that considering the finding of the authorities below on the nature of transaction as lease and in the absence of any materials to show that the character of the transaction could not be accepted as lease, the Revenue failed to substantiate its contention that the substance of the transaction was nothing but a sale. He further placed reliance on the decision reported in 272 ITR 115 (CIT v. SOUTH INDIA VISCOSE LTD), wherein, under identical circumstances, this Court accepted the plea of the assessee and rejected the contention of the Revenue. He submitted that it is a matter of contract for the parties to have the terms fixed as per their needs and commercial wisdom. As such, in the absence of any material, different conclusion could not be drawn from the document to hold the transaction as sale.

20. We agree with the contention of the assessee. Apart from the fact that the issue raised is a pure question of fact, a look at the terms of the document speak on the character of the transaction. A reading of the document would clearly show that the parties were clear as to what they intended to do. The fact that the lessee had paid more than 90% of the cost of lease rental by way of meeting the expenditure, 90% of the security deposit going in for adjustment towards lease rentals does not by itself convert otherwise a lease transaction into sale. As rightly submitted by the learned counsel for the assessee, the lease transaction was with the Government Agency, and the registration certificate clearly showed that the vehicles were under lease. Clause 3 of the agreement speaks about the title to the vehicle, which showed that the assessee/lessor had exclusive right over the property, namely, the subject matter of lease. The lessee had also expressed that during the currency of the lease agreement, it would not include the leased assets as fixed assets in its books of accounts, capitalize the leased assets, since the parties agreed that the ownership of the asset during the lease tenure undisputedly rested only with the lessor/assessee. It is also seen that in the event of total damage to the vehicles, the lessee would have to forego

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the deposit standing to its credit with the lessor. On the termination of lease, by efflux of time at the end of 9 years, the lessee shall deliver the vehicle to the lessor, unless the parties agreed for renewal of the lease. In the background of these facts, and considering the fact that the sales tax assessment was made on the basis of deemed sale in the nature of right to use the vehicles under the provisions of the Maharashtra Sales Tax Act, we do not find any justification in the submission made by the learned senior standing counsel, that the transaction could be viewed as a sale. The fact that the assessee paid 90% of the value by way of fixed deposit is a matter of agreement between the parties and the same cannot be read in isolation without reference to the other clauses in the agreement. Consequently, the payment of 90% of the value, per se, does not make the transaction a sale, read in the context of the various clauses showing the effective ownership of the assets still lying with them. In the context of the factual findings, we do not find any merit in the appeal preferred by the Revenue. In the circumstances, this question is answered against the Revenue.

21. The Tribunal correctly arrived at the factual finding that the transaction is a lease transaction; that the lease rentals received/receivable by the assessee from MSRTC is to be assessed as income. Consequently, the direction given by the Tribunal to grant the depreciation allowance on the leased out vehicles at the rates applicable as per the Rules cannot be found fault with. In the circumstances, we confirm the order of the Tribunal and reject the appeal on this issue.

22. As far as T.C.Nos.404 and 405 of 2004 are concerned, in the light of the view we have taken, the first question as regards excise duty to be deducted from the total turnover for the purpose of computation of benefits under Section 80 HHC is answered against the Revenue.

23. The second question of law relates to deduction of unabsorbed loss to arrive at the profits for the purpose of calculating the deduction under Section 80HHC. The Tribunal upheld the claim following 88 ITR 192 (CIT Vs. VEGETABLE PRODUCTS LTD (S.C.). The Revenue has questioned this contending that brought forward loss should not be deducted from the profits and gains of business for the purpose of working out the relief under Section 80HHC. A perusal of Section 80A(1) describes the deductions to be computed from the gross total income. Section 80B (5) defines total income as one computed in accordance with the provisions of the Act before making any deduction under Chapter VI A. Touching on the provision of Section 80-AB, in the case of IPCA LABORATORY LTD. V. DEPUTY C.I.T (266 ITR 521), the Supreme Court held that in computing the total income of the assessee, both profits as well as losses will have to be taken into consideration. Referring to Section 80B (5) as well as to Section 80AB, the Apex Court held that for purposes of working out the relief under Section 80HHC, the computation has to be made first as given under Section 80AB, which means, the computation of income has to be in accordance with the provisions of the Act. Hence, before deduction under Section 80 HHC is considered, the Assessing Authority has to compute the income in

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accordance with the provisions of the Act. In which event, the profits and gains of income from business will have to be computed taking note of Section 72A also. The Commissioner (Appeals) pointed out that the accumulated loss which were carried forward and set off under the provisions of Section 72A were correctly deducted by the Assessing Authority before computing the deduction under Section 80HHC. Hence, the computation done is in accordance with the scheme, as interpreted by the Supreme Court. In the above circumstances, we do not find any justification to accept the plea of the assessee that the unabsorbed loss should not be deducted to arrive at the profits for the purposes of calculating the deduction under Section 80HHC. In the circumstances, the order of the Tribunal in this regard is unsustainable and hence the question is answered in favour of the Revenue.

24. As regards the third question on the premium payable on redemption of debentures in future years is to be spread over and part of it allowed as a deduction in this year, the same is covered by the decision of the Apex Court reported in 225 ITR 802 (MADRAS INDUSTRIAL INVESTMENT CORPORATION LTD Vs. CIT) and the decision of this Court reported in 204 CTR 115 (CIT Vs. FIRST LEASING CO. OF INDIA LTD.), to which one of us were a party (P.D. DINAKARAN, J), and is therefore answered against the Revenue.

25. The fourth question as regards these appeals is the same as the third question raised in T.C.Nos.173 and 174 of 2003. Considering the question already answered against the Revenue, the same are rejected and answered against the Revenue.

26. As regards the fifth question relating to the Tribunal remanding the matter to the Assessing Officer to re-compute the interest exempted under Section 10(15(iv) in accordance with the ruling in Vijaya Bank Vs. CIT reported in 187 ITR 841 (SC), the Tribunal had noted that it is not clear from the records as to whether the bonds were subscribed or purchased from the market. If the bonds are subscribed, then the interest thereon would be exempt under Section 10(15) of the Act. If the bonds are purchased from the market, then the ratio laid down in the decision of the Supreme Court reported in 187 ITR 841 (SC), (VIJAYA BANK Vs. CIT) would apply. Considering the view expressed by the Tribunal as regards the paucity of materials to arrived at the conclusion, the remand order passed by the Tribunal cannot be found fault with. In the circumstances, we do not find any question of law arising in this matter. Consequently, the appeal of the Revenue stands rejected.

27. As far as T.C.Nos.1329 and 1330 of 2005 are concerned, in the light of the view we have taken in the appeals referred to above, all the questions are answered against the Revenue. Hence T.C.Nos.1329 and 1330 of 2005 are dismissed. No costs.

In the circumstances, in T.C.Nos.173 and 174 of 2003, all the four questions are answered against the Revenue. In T.C.Nos.404 and 405 of

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2004, except question No.2, all other questions are answered against the Revenue. In T.C.Nos.1329 and 1330 of 2005, all the questions are answered against the Revenue.

bg

sd/-
Asst.Registrar

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Sub Asst.Registrar

To

1. The Assistant Registrar,
   Income Tax Appellate Tribunal,
   III Floor, Rajaj Bhavan,
   Besant Nagar, Chennai.34.

2. The Commissioner of Income Tax
   (Appeal)I Madras.34.

3. The Assistant Commissioner of Income Tax
   Central Circle II(1) Madras.34

4. The Commissioner of Income Tax - 1
   Chennai.

5. The Commissioner of Income Tax,
   Chennai.

+ 1 cc to Mrs.Pushaya Sitaraman Advocate SR.NO.9707

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